

**CALIFORNIA COASTAL COMMISSION**

CENTRAL COAST DISTRICT OFFICE  
725 FRONT STREET, SUITE 300  
SANTA CRUZ, CA 95060  
(831) 427-4863

**W13a**

**Prepared April 22, 2004 (for May 12, 2004 hearing)**

**To:** Commissioners and Interested Persons

**From:** Diane Landry, District Manager  
Mike Watson, Coastal Planner

**Subject:** **City of Pismo Beach LCP Major Amendment Number 1-04 Part 1 (Second Units – AB 1866)** Proposed major amendment to the City of Pismo Beach certified Local Coastal Program to be presented for public hearing and Commission action at the California Coastal Commission's May 12, 2004 meeting to take place at the Marin County Board of Supervisors Chambers Room 322, Marin County Civic Center, in San Rafael.

## Summary

The City of Pismo Beach is proposing to amend its Local Coastal Program (LCP) Implementation Plan (IP, also known as the LCP zoning ordinance) sections in response to recent legislative changes regarding second units (per AB 1866). AB 1866 amended Government Code Section 65852.2 to change the process for the review of second unit applications. Most significantly, AB 1866 requires that second unit applications in residentially designated areas received after July 1, 2003 be considered by local governments "ministerially without discretionary review or a hearing." The restriction on public hearings does not extend to the Coastal Commission.

The City proposes amending the IP to establish secondary dwelling units as a permitted use in all residential zone districts, define the development standards, amend public hearing requirements, and include parameters for appealable versus non-appealable second units. The proposed amendment also includes amending language to "grandfather" existing secondary dwelling units that meet Uniform Building Code standards.

The changes proposed are straight-forward and narrowly focused in response to AB 1866 requirements. There are a few areas where minor clarification is necessary (making explicit certain implicit requirements and making minor coastal zone-specific clarifications). More substantively, clarification is needed to ensure that essential public services are available to meet demand for such services and that all development pursued under this section is consistent with the City's General Plan/Coastal Land Use Plan and the certified zoning ordinance. In an area where water and sewer facilities are not limitless, and in particular an already over-loaded sewage system threatens to severely curtail additional development, it is appropriate to include this requirement. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public service capacity is further curtailed, take services that are directed by the LCP to higher priority uses in times of limited supply; (2) draw on public services even if there aren't adequate services available; (3) be approved, and not built, leading to any number of "stale" approvals not necessarily responsive to current conditions in this and



**California Coastal Commission**  
**May 12, 2004 Meeting in San Rafael**

Staff: M. Watson Approved by:  
PSB LCPA 1-04 Part 1 2nd units (AB 1866) stfprt 4.22.04.doc

other respects.

In order to address these public service concerns (and the other minor issues), modifications are suggested to include the public service text and to make small changes designed to ensure that the proposed text is consistent with the certified LUP.

**With the identified modifications, staff recommends that the Commission find that the proposed LCP amendment is consistent with and adequate to carry out the policies of the LUP. As so modified, staff recommends that the Commission approve the LCP amendment.**

## Staff Report Contents

	page
I. Staff Recommendation – Motions and Resolutions.....	2
II. Suggested Modifications.....	3
III. Findings and Declarations .....	6
A. Proposed LCP Amendment.....	6
B. Consistency Analysis.....	8
C. California Environmental Quality Act (CEQA).....	13
IV. Exhibits	
Exhibit A: City Council Ordinance	
Exhibit B: City Council Staff Report	
Exhibit C: Proposed LCP Amendment	

## I. Staff Recommendation – Motions and Resolutions

Staff recommends that the Commission, after public hearing, approve the proposed amendment only if modified. The Commission needs to make 2 motions in order to act on this recommendation.<sup>1</sup>

### 1. Denial of Implementation Plan Major Amendment Number 1-04 Part 1 as Submitted

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in rejection of the amendment and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion (1 of 2).** I move that the Commission **reject** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan as submitted.

**Resolution to Deny.** The Commission hereby **denies** certification of Part 1 of Major

<sup>1</sup> Note that the motions and resolutions refer to “Part 1 of Major Amendment Number 1-04.” The reason for this is that this amendment request is part 1 of a two part LCP amendment submitted by the City of Pismo Beach. Part 2 of the amendment, regarding a change in the density and development on steep slopes, will be brought before the Commission at its next regularly scheduled hearing.



Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan as submitted by the City of Pismo Beach and adopts the findings set forth in this staff report on the grounds that, as submitted, the Implementation Plan amendment is not consistent with and not adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment would not comply with the California Environmental Quality Act because there are feasible alternatives or mitigation measures which could substantially lessen any significant adverse effect which the Implementation Plan Amendment may have on the environment.

## **2. Approval of Implementation Plan Major Amendment Number 1-04 Part 1 if Modified**

Staff recommends a **YES** vote on the motion below. Passage of this motion will result in certification of the amendment with suggested modifications and the adoption of the following resolution and the findings in this staff report. The motion passes only by an affirmative vote of a majority of the Commissioners present.

**Motion (2 of 2).** I move that the Commission **certify** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan if it is modified as suggested in this staff report.

**Resolution to Certify with Suggested Modifications.** The Commission hereby **certifies** Part 1 of Major Amendment Number 1-04 to the City of Pismo Beach Local Coastal Program Implementation Plan if modified as suggested and adopts the findings set forth in this staff report on the grounds that, as modified, the Implementation Plan amendment is consistent with and adequate to carry out the certified Land Use Plan. Certification of the Implementation Plan amendment if modified as suggested complies with the California Environmental Quality Act because either: (1) feasible mitigation measures and/or alternatives have been incorporated to substantially lessen any significant adverse effects of the plan on the environment; or (2) there are no further feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts which the Implementation Plan Amendment may have on the environment.

## **II.Suggested Modifications**

The Commission hereby suggests the following modifications to the proposed LCP amendment, which are necessary to make the requisite Land Use Plan consistency findings. If the City of Pismo Beach accepts each of the suggested modifications within six months of Commission action (i.e., by November 8, 2004), by formal resolution of the City Council, the corresponding amendment will become effective upon Commission concurrence with the Executive Director's finding that this acceptance has been properly accomplished. Where applicable, text in ~~cross-out~~ format denotes text to be deleted and text in underline format denotes text to be added.

### **1. Modify Proposed Changes to IP Section 17.117(C).**



2. Secondary dwelling units designed in accordance with this section require no discretionary approval, unless as provided for herein.

**2. Modify Proposed Changes to IP Section 17.117(D): Applicability.**

Secondary dwelling units are permitted in R-1, R-2, R-3, ~~R-R, P-R~~ zones, on lots or parcels where there is only one existing or planned residence, and where the required number of parking spaces for the primary residence is provided. The requirements in this section apply to new secondary dwelling units and to additions to existing secondary dwelling units.

**3. Modify Proposed Changes to IP Section 17.117(E).**

2. **Projects in Coastal Appeal Zone.** A Coastal Development Permit is required. The public hearing is hereby waived, in accordance with Section 17.124.100, unless the second unit is a part of a larger project that requires a public hearing or if a variance is requested. Notice shall be provided in accordance with Section 17.125.090. Action on project is final, unless appealed to the Coastal Commission within ten (10) days of the Commission's receipt of the Notice of Final Local Action.

**4. Modify Proposed Changes to IP Section 17.117(H).**

2. **Lot Area.** ~~The lot may be any size.~~ Minimum lot area shall be established by the standards of the primary zone. See Section 17.102.100.
3. **Lot Coverage, yards, height, maximum building area.** All new development, when combined with the existing development, ~~must~~ shall conform to the development standards of the underlying zone, ~~except where specifically modified herein.~~
6. **Services.** The primary and secondary units may be served from the same gas, electricity, and water lines, at the discretion of the property owner. No development shall be approved that would exceed the capacity of the municipal utility systems. Specifically, all applications received for secondary dwelling units shall be accompanied with evidence provided by the municipal utility provider that there are adequate services/capacity to serve the proposed development.
9. **Consistency with codes.** ~~All New development must~~ shall comply with all local, state, or federal regulations that apply to the property, including ~~grading, tree protection, open space ordinances~~ the applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance, and the adopted Building Code, ~~except where specifically modified herein.~~

**5. Modify Proposed Changes to IP Section 17.117(I): Acceptance of existing secondary dwelling units.**

1. **Exemption.** Existing secondary dwelling units that meet requirements of the Uniform Housing Code, as determined by the Building Official, on lots that include the required number of parking spaces for the primary dwelling unit, are exempt from the parking and unit size requirements of



this section. All new development or modification of existing secondary units shall conform to the development standards of the underlying zone and all applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance.

#### 6. Modify Proposed Changes to IP Section 17.117(K).

~~**Exceptions.** Secondary Dwelling Units that do not meet all of the above standards may be allowed, subject to discretionary approval of a Development or Coastal Development Permit by the Planning Commission. To approve a secondary dwelling unit with exceptions, the Planning Commission must make all of the following findings:~~

- ~~1. The project meets the intent of State law and of the secondary dwelling unit regulations.~~
- ~~2. The exception is reasonably necessary for the development of a primary and secondary unit on the site.~~
- ~~3. The project will be compatible with the neighborhood.~~

#### 7. Modify Proposed Changes to IP Section 17.124.100: Public Hearing Procedures. (Recommended change is denoted in *italic* text).

At least one public hearing shall be held on each application for an appealable or non-appealable coastal development permit application for a project in the R-3, R-4, P-R, R-R, C-R, M-H, C-1, C-2, C-M, OS-1, OS-R, or G zones, except that no hearing is required for the development of a secondary unit consistent with Section 17.117 of this Code, *unless the secondary unit is a part of a larger project that requires a public hearing or if a variance is required.* At least one public hearing shall be held on each application for an appealable coastal development permit application for a project in the R-1 and R-2 zones, except that no hearing is required for the development of a secondary dwelling unit consistent with Section 17.117 of this Code, *unless the secondary unit is a part of a larger project that requires a public hearing or if a variance is required.* Non-appealable coastal developments in the R-1 and R-2 zones may be processed as administrative permits at a staff level pursuant to the noticing standards of this ordinance for non-appealable developments. Such hearings shall occur no earlier than ten (10) calendar days following the mailing of the notices required by this chapter. The public hearing shall be conducted in accordance with existing City procedures or in any other manner reasonably calculated to give interested persons an opportunity to appear and present their viewpoints, either orally, or in writing.

#### 8. Add Proposed Language to IP Section 17.121.200: Application for Permit.

Concurrent with the project application a written commitment from the water purveyor is required that verifies the capability of the system to serve the proposed development. Projects shall not be approved in areas that do not have a proven, adequate water supply. A written commitment is a letter from the purveyor guaranteeing that the required level of service for the



project will be available prior to the issuance of building permits. The City decision making body shall not approve any development project unless it determines that such project has adequate water supply available.

Concurrent with project application, a written commitment from the wastewater service district is required. A written commitment is a letter, with appropriate conditions, from the wastewater service district guaranteeing that the required level of service for the project will be available prior to issuance of building permits. The City decision making body shall not approve any development project unless it determines that such project has adequate sewage treatment plant capacity.

### **III. Findings and Declarations**

The Commission finds and declares as follows:

#### **A. Proposed LCP Amendment**

##### **1. Government Code (and AB 1866) Second Unit Requirement Background**

Signed by former Governor Davis on September 29, 2002, AB 1866 added three new provisions to Section 65852.2 of the Government Code that are particularly significant for the purposes of reviewing proposed second units in residential zones within the coastal zone. The law now:

- 1) Requires local governments that adopt second unit ordinances to consider second unit applications received on or after July 1, 2003 “ministerially without discretionary review or a hearing.” (Government Code Section 65852.2(a)(3))
- 2) Requires local governments that have not adopted second unit ordinances to “approve or disapprove the [second unit] application ministerially without discretionary review.” (Government Code Section 65852.2(b)(1))
- 3) Specifies that “nothing in [Section 65852.2] shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act ... except that the local government shall not be required to hold public hearings for coastal development permit applications for second units.” (Government Code Section 65852.2(j))

Thus, AB 1866 significantly changes one component of local government procedures regarding coastal development permits for second units in residential zones (public hearings), but does not change the substantive standards that apply to coastal development permits for such second units.

Pursuant to AB 1866, local governments can no longer hold public hearings regarding second units in



residential zones. This prohibition applies both to initial local review and any subsequent local appeals that may be allowed by the LCP. The restriction on public hearings, however, does not apply to the Coastal Commission itself. The Commission can continue to conduct public hearings on proposed second units located in areas where the Commission retains permitting jurisdiction and when locally approved coastal development permits are appealed to the Commission.

AB 1866 does not change any other procedures or the development standards that apply to second units in residential zones located within the coastal zone. Rather, it clarifies that all requirements of the Coastal Act apply to second units, aside from requirements to conduct public hearings. Thus, for example, public notice must be provided when second unit applications are filed and members of the public must be given an opportunity to submit comments regarding the proposed development. When a second unit application is appealable, local governments must still file a final local action notice with the Commission and inform interested persons of the procedures for appealing the final local action to the Commission. In addition, all development standards specified in the certified LCP and, where applicable, Chapter 3 of the Coastal Act apply to such second units.

## **2. Description of Proposed LCP Amendment**

Prior to the submittal of the LCP amendment, the City of Pismo Beach General Plan/ Local Coastal Plan did not contain any specific provisions for secondary dwelling units other than general policies that promoted a range of density categories and housing types. As such, the proposed amendment to the certified LCP involves the establishment of a new zoning ordinance element (§ 17.117 Secondary Dwelling Units) that establishes the development standards and rules for construction of secondary dwelling units within the City's residential neighborhoods and identifies the process for noticing and reviewing second unit applications. The City's request also includes an amendment to Section 17.006 of the certified IP ordinance (Definitions) to add the definition of primary and secondary dwelling units, and another amendment to the Public Hearing Procedures ordinance (§ 17.124.100) that eliminates the requirement for a public hearing on secondary units. Specifically, the amendment:

- (1) Modifies Section 17.006 to add the definitions of primary dwelling units, secondary dwelling units, and transient lodging or rental (subsections (.0847), (.0887), and (.0953)).
- (2) Adds new Section 17.117 that establishes the intent and purpose of the secondary dwelling unit element, applicability of the element, identifies the development standards and permit requirements, identifies the process for noticing and reviewing second unit applications, and includes provisions for "grand-fathering" existing secondary dwelling units;
- (3) Modifies Section 17.124.100 to eliminate the public hearing requirement for second unit applications.

See exhibit A for the City Council ordinance, exhibit B for the Council staff report, and exhibit C for the proposed amendment.



### **3. Effect of Proposed Amendment**

Applications for second units, a maximum of 1,200 square feet in size, in the coastal zone will be processed ministerially without public hearings. Curiously, noticing for interested parties and those properties within 100 feet of the second unit property will be required for projects outside the appeal zone, though no notice is required for projects within the Commission's appeal jurisdiction. Approvals of second units in the appeal zone will continue to be appealable to the Coastal Commission, whereas CDP approvals for projects located outside the appeal zone will be final.

The changes will potentially make it easier and quicker (and less costly in permit application fees) for applicants to gain approvals for second units in residential zones. Some of this depends on the manner in which administrative reviews will be undertaken at the City, and the length of time that these will take. The specifics of the City's internal review process in this respect are unknown at this time. Nevertheless, the lack of a hearing requirement should reduce the absolute amount of processing time associated with a second unit application because it removes a major step.

Omission of a requirement that public service commitments be demonstrated would further reduce the number of steps for an applicant. It would also lead to approval of second units for which it is uncertain if there are adequate public services. This in turn could lead to scarce public service supply being directed to second units as a class of development (since they would be the only class of development to which this requirement wouldn't apply). Depending on the amount of second units that were eventually approved, the changes could lead to increased use of public services, hastening the time when capacity, particularly sewer and water, is reached.

## **B. Consistency Analysis**

### **1. Standard of Review**

The standard of review for proposed modifications to the City's IP is that they must be consistent with and adequate to carry out the policies of the Land Use Plan (LUP). In general, Coastal Act policies set broad statewide direction that are generally refined by local government LUP policies giving local guidance as to the kinds, locations, and intensities of coastal development. IP (zoning) standards then typically further refine LUP policies to provide guidance on a parcel-by-parcel level. Because this is an IP (only) LCP amendment, the standard of review is the certified Local Coastal Program LUP.

### **2. LUP Consistency Requirement**

In order to approve an Implementation Plan amendment, it must be consistent with and adequate to carry out the Land Use Plan. The City's LUP protects visual and community character, and requires demonstration of sewer and water capacity to serve proposed development. It also distinguishes between urban and rural development, and directs development to developed areas best able to accommodate it. Quality design, respective of the built and natural environment, is expected. Overall, these LUP requirements reflect and implement similar fundamental goals of the Coastal Act.





### 3. Consistency Analysis

The proposed amendment is mostly straight-forward and narrowly focused in response to AB 1866 requirements. However, the proposed amendment includes provisions that might result in inappropriate development inconsistent with the LUP if not modified. Fortunately, these portions of the proposed text are easily clarified so that the amendment applies only to the appropriate categories of development and ensures public services are available. Other minor clarifications are necessary to ensure 1) notice is provided, 2) all development standards are met including setbacks and minimum lot area, 3) modification to existing secondary dwellings conform to the development standards, 4) elimination of exceptions to the development standards, and 5) provisions for public hearings when secondary unit proposals are part of a larger project or if a variance is required. Individual issues (and changes that need to be made) are discussed more specifically below.

#### Applicability

The certified LCP currently prohibits secondary dwelling units (i.e., granny units). The proposed amendment would create a new allowable use in residentially zoned districts including R-1 (low density), R-2 (medium density), R-3 (multi-family), R-R (resort residential), and P-R (planned residential). Since the certified LUP does not currently have any policies related to secondary dwelling units, there is no policy guidance. However, the text of AB 1866 is specific in establishing the applicability for the creation of secondary units in single-family and multi-family residential zones only. The provisions of AB 1866 would therefore not apply to resort-residential and planned residential zones as proposed by the City because they do not allow solely residential uses but rather promote more intensive uses such as Motels/Hotels, etc. As such a modification is proposed that removes the R-R and P-R zoned districts from the City's proposed secondary dwelling unit amendment.

#### Evidence of Public Services

The certified LUP stipulates that no new development be approved that would individually or cumulatively exceed the capacity of the wastewater treatment and water supply systems (LUP Policies F-29 and F-36). When maximum capacity has nearly been reached, these policies further limit approvals of development to essential public services, public recreation, commercial recreation, and visitor-serving land uses. Land Use Plan Policy GM-1 limits the issuance of building permits for new residential units to 3% per year, based on the number of units estimated to exist within the City as of January 1 of the preceding year. The growth rate is managed to ensure that the amount of new development annually is commensurate with the availability of public services and infrastructure. This policy also requires the city to prepare a Growth Management Status Report every three years that includes the number of residential permits issued and the status of services and infrastructure. . Specifically, LUP Policies F-29, F-36, and GM-1 state, in part:

#### *LUP Policy F-29 Treatment Plan Expansion*

*The City shall plan for treatment plant expansion when average daily flow reaches 75% of current capacity; expansion shall be completed before the plant reaches 90% of current capacity. When 90% capacity is reached, approval of developments requiring additional*



*wastewater treatment capacity shall be limited to essential public services, public recreation, commercial recreation, and visitor-serving land uses. No development shall be approved which would individually or cumulatively exceed the capacity of the wastewater treatment system.*

***LUP Policy F-36 Water Management Program***

*The City shall prepare and annually review a comprehensive water management program which shall include, but not be limited to:*

- 1. Groundwater Depletion Analysis -Since the City relies on groundwater for a significant portion of its potable water, the depletion of the groundwater basin by overdrafting the supply shall be avoided at all times.*
- 2. Additional Water Sources -The City should pursue a variety of alternative additional water sources that will be sufficient to support the General Plan. New development should be allowed only as additional long-term proven water sources become available. When total annual water uses reaches 90% of projected available supplies (based on safe yield levels determined by the Groundwater Depletion Analysis, plus available entitlements from Lake Lopez and the State Water Project), approval of developments requiring increasing water supplies shall be limited to essential public services, public recreation, commercial recreation, and visitor-serving land uses. No development shall have building permits issued which would individually or cumulatively exceed the capacity of the City's water supply systems. Projects which are dependent on the availability of water supplies from the State Water Project shall be paced in accordance with the projected connection schedule, and shall not be approved until a firm delivery date has been established and construction on the delivery line(s) commenced. Interim individual water wells will not be permitted where depletion of the City's existing groundwater resources could result.*

***LUP Policy GM-1 Residential Growth Rate***

*The City's residential growth rate shall be managed to assure that the amount of new development annually is commensurate with the availability of public services and infrastructure and will not result in a deterioration of the quality of service to existing or new residents.*

- a. The issuance of building permits for new residential units shall not exceed 3% per year, based on the number of units estimated by the California Department of Finance to exist within the City as of January 1 of the preceding year.*
- b. A Growth management Status Report shall be prepared by the City staff and provided to the City Council at least every three years, commencing in 1995. The report shall include the number of residential permits issued and the status of services and infrastructure.*



As it stands today, the certified zoning ordinance does not contain any implementing measures (ordinances or standards) to ensure that public services are available to serve new development, though there is one growth management standard (17.121.220) that requires residential growth to proceed in accordance with the policies and procedures of the General Plan/Local Coastal Plan.

As reported in the February 2002 Local Agency Formation Commission (LAFCO) study, existing water use (as of October 2001) reached 80% of available supply. In October 2002, it was estimated that the City's wastewater treatment plant had reached 83% of capacity and that its aging infrastructure was at the root of several spills. The City has been working to upgrade these systems and obtain additional capacity to serve its residents, but the wastewater treatment plant upgrade may take several years to complete and additional water supplies have not yet been secured. Thus, in an area where water and sewer facilities are not limitless, and in particular where limited water supply, wastewater capacity, and aged infrastructure threatens to curtail additional development, it is appropriate to require evidence of public service availability. Second unit development will draw on such services, and it must be demonstrated that such services are available before second units can be approved. To do otherwise would allow a class of development that could: (1) if public services are further curtailed, take services that are directed to higher priority uses in times of limited supply by the LCP; (2) draw on public services even if there aren't adequate services available; (3) be approved, but not built, leading to any number of "stale" approvals not necessarily responsive to future conditions in this and other respects. Thus, evidence of public service availability is necessary to carry-out the intent of the certified Land Use Plan policies. Omission of a public service requirement directly conflicts with policies requiring demonstration of service and reserving capacity for priority uses, and cannot be found consistent with the LUP for these reasons. Therefore, the Commission recommends modifications to include proof of sewer and water service when an application is received for secondary dwelling units and all coastal development permits (see suggested Modifications 4.6 and 8).

### **Lot Area**

Proposed Section 17.117 H.2 establishes the lot area criteria for approval of secondary dwelling units. As currently proposed, the City's amendment would allow any lot size, i.e., there is no minimum lot size identified. The text of AB 1866 specifically states that secondary dwelling unit provisions may be implemented as long as second units are a residential use that is consistent with existing general plan and zoning designation for the lot. The City's general plan and zoning ordinance specifically require minimum lot sizes for the various residential zones. Thus, a modification is proposed that limits the approval of secondary dwelling units to lots that meet the minimum lot requirements of the primary zoning. See Modification 4.2.

### **Lot Coverage**

The proposed amending language (17.117 H.3) states that all new development must conform to the development standards of the underlying zone. This text could be read to indicate that the second unit, when evaluated alone, needs to meet these requirements, irrespective of the existing first unit's coverage. Such an interpretation would allow for much denser development that exceeds maximum mass and scale requirements to the detriment of community character and coastal viewsheds. This is



easily corrected by specifying that the coverage standards are cumulative. In other words, the attributes of the second unit must be added to the attributes of the first and together must be less than the maximum coverage standards. See suggested Modification 4.3.

### **Permit and Notice Requirements**

Proposed Section 17.117 E.2 establishes the permit requirements for projects within the coastal appeal zone. It notes that coastal development permits are required for secondary dwelling units and waives the public hearing requirements of the zoning ordinance. The action on the project by the City is final unless an appeal is brought to the Coastal Commission within ten days of the receipt of the City's Notice of Final Local Action. The ordinance is silent on the noticing requirements. Staff has recommended two modifications to the amending language. The first modification includes a public hearing requirement for requests for secondary dwelling units that are a part of a larger project that requires a public hearing or whenever a variance is requested. So, for example, if the proposed development includes a single-family residence and secondary dwelling unit or if the proposal requires a variance, then there must be a public hearing. Otherwise, requests solely for secondary dwelling units that meet all the development standards are waived from the public hearing requirements. Secondly, a modification is recommended that requires noticing of all proposed secondary dwelling units in accordance with the existing notice requirements of the certified zoning (section 17.124.090). Nothing in AB 1866 precludes or exempts a local government from meeting its notice obligations for Coastal Development Permits under the Coastal Act. See Modifications 3 and 9.

### **Exemption for Existing Secondary Dwelling Units**

The proposed amendment (Section 17.117K indicates that certain existing secondary structures may be exempted from the parking and unit size requirements of the secondary dwelling unit element, if the existing secondary unit meets the requirements of the Uniform Building Code and the primary dwelling has the requisite parking. Though the proposed exemption does not appear to conflict with the certified LUP, a modification is needed to clarify that all *new* development of secondary dwelling units and/or modification of existing secondary units must conform to the development standards of the underlying zone and all applicable requirements of the General Plan/Local Coastal Plan and certified zoning ordinance. See suggested Modification 5.

### **Exceptions**

Section 17.117 K of the proposed amendment provides that secondary dwelling units that do not meet all of the identified development standards may be allowed subject to a discretionary approval of a Coastal Development Permit by the Planning Commission. In order to approve the second unit, the PC must make the findings that the project meets the intent of state law with respect to secondary units, the exception is necessary for development of a primary and secondary unit on the site, and the project will be compatible with the neighborhood. This section of the proposed amendment, in and of itself, appears to conflict with the intent of AB1866. The purpose of the bill was to promote additional (i.e., secondary) housing units within existing residentially zoned neighborhoods, by streamlining the application review and approval process. In order to achieve this and maintain neighborhood character and compatibility, AB 1866 contains provisions that require a local government to impose standards on second units



including density requirements, availability of sewer and water, and other development standards such as building height, setbacks, parking, lot coverage, maximum size of unit. The amending language proposed by the City would appear to eliminate these requirements and provide for a class of development that does not conform to the building requirements of the primary zone. The abbreviated review and approval process authorized under AB 1866 are specifically limited to those classes of development that are consistent with the development standards of the primary zone.

Secondly, an exception process is not necessary. Any proposed development that does not meet the standards of the primary zone, may be approved with a variance. Those projects that require a variance, however, are subject to the regular notice and hearing requirements of the LCP.

And lastly, it is difficult to understand how a project that does not meet the development standards of the underlying zoning can be found compatible with the neighborhood. The development standards established for a zoning district are the measuring stick from which to evaluate a project's consistency and compatibility with the existing character of the built environment. By eliminating these requirements, the City eliminates the criteria for which all projects are evaluated. Therefore, staff is recommending a modification that strikes the exception clause from the proposed zoning ordinance amendment. See Modification 6.

#### **Clarifications/Other**

In addition to those issues detailed above, there are instances where the language of the proposed amendment needs to be clarified to ensure its clear implementation consistent with the LUP. See suggested Modifications 1 and 4.9.

#### **Conclusion**

The Commission must determine whether the zoning code changes proposed are consistent with and adequate to carry out the LUP. There are portions of the proposed IP text where there are inconsistencies and/or other issues that would affect the proposed amendment's ability to carry out LUP policies, and ultimately to ensure that coastal resources are protected as directed by the LUP. Fortunately, there are modifications that can be made to address the identified issues.

In conclusion, if so modified in all of the ways outlined here according to the cited modification texts, then the IP as amended by the proposed amendment, and as further modified as suggested above and in the cited modification texts, is approved as being consistent with and adequate to carry out the certified LUP as amended.

### **C. California Environmental Quality Act (CEQA)**

The Coastal Commission's review and development process for LCPs and LCP amendments has been certified by the Secretary of Resources as being the functional equivalent of the environmental review required by CEQA. Therefore, local governments are not required to undertake environmental analysis of proposed LCP amendments, although the Commission can and does use any environmental information that the local government has developed. CEQA requires that alternatives to the proposed



action be reviewed and considered for their potential impact on the environment and that the least damaging feasible alternative be chosen as the alternative to undertake.

The City in this case prepared a negative declaration for the proposed amendment under CEQA. This staff report has discussed the relevant coastal resource issues with the proposal, and has recommended appropriate suggested modifications to avoid and/or lessen any potential for adverse impacts to said resources. All public comments received to date have been addressed in the findings above. All above Coastal Act findings are incorporated herein in their entirety by reference.

As such, there are no additional feasible alternatives nor feasible mitigation measures available which would substantially lessen any significant adverse environmental effects which approval of the amendment, as modified, would have on the environment within the meaning of CEQA. Thus, if so modified, the proposed amendment will not result in any significant environmental effects for which feasible mitigation measures have not been employed consistent with CEQA Section 21080.5(d)(2)(A).

